

The Honorable Kymberly K. Evanson

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMAZON STUDIOS LLC, a California
Limited Liability Company,

Plaintiff / Counterclaim Defendant,

v.

CONTENT DELIVERY AND SECURITY
ASSOCIATION, INC., a New York not-for-
profit Corporation,

Defendant / Counterclaim Plaintiff.

No. 2:24-cv-01789-KKE

AGREEMENT REGARDING DISCOVERY
OF ELECTRONICALLY STORED
INFORMATION AND ORDER

Plaintiff / Counterclaim Defendant Amazon Studios LLC (“Amazon”), and Defendant /
Counterclaim Plaintiff Content Delivery and Security Association, Inc (“CDSA”) (collectively,
the “Parties”) by and through their undersigned counsel, respectfully submit this Agreement
Regarding Discovery of Electronically Stored Information.

A. General Principles

1. An attorney’s zealous representation of a client is not compromised by conducting
discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate
in facilitating and reasonably limiting discovery requests and responses raises litigation costs and
contributes to the risk of sanctions.

2. As provided in LCR 26(f), the proportionality standard set forth in Federal Rule of Civil Procedure (“Rule”) 26(b)(1) must be applied in each case when formulating a discovery plan. To further the application of the proportionality standard in discovery, requests for production of ESI and related responses should be reasonably targeted, clear, and as specific as possible. This agreement is intended to assist the parties in identifying relevant, responsive information that has been stored electronically and is proportional to the needs of the case. The agreement does not supplant the parties’ obligations to comply with Rule 34.

B. ESI Disclosures

Within 30 days of entry of this Order, or at a later time if agreed to by the parties, each party shall disclose:

1. Custodians. The custodians most likely to have discoverable ESI in their possession, custody, or control. The custodians shall be identified by name, title, connection to the instant litigation, and the type of information under the custodian’s control.

2. Non-custodial Data Sources. A list of non-custodial data sources (e.g., shared drives, servers), if any, likely to contain discoverable ESI.

3. Third-Party Data Sources. A list of third-party data sources, if any, likely to contain discoverable ESI (e.g., third-party email providers, mobile device providers, cloud storage) and, for each such source, the extent to which a party is (or is not) able to preserve information stored in the third-party data source.

4. Inaccessible Data. A list of data sources, if any, likely to contain discoverable ESI (by type, date, custodian, electronic system or other criteria sufficient to specifically identify the data source) that a party asserts is not reasonably accessible under Rule 26(b)(2)(B).

C. ESI Discovery Procedures

1. On-site inspection of electronic media. Such an inspection shall not be required absent a demonstration by the requesting party of specific need and good cause or by agreement of the parties.

2. Search methodology. The parties shall timely confer to attempt to reach agreement on appropriate search terms and queries, file type and date restrictions, data sources (including custodians), and other appropriate computer- or technology-aided methodologies, before any such effort is undertaken. The parties shall continue to cooperate in revising the appropriateness of the search methodology.

a. Prior to running searches:

i. The producing party shall disclose the data sources (including custodians), search terms and queries, any file type and date restrictions, and any other methodology that it proposes to use to locate ESI likely to contain responsive and discoverable information. The producing party may provide unique hit counts for each search query.

ii. After disclosure, the parties will engage in a meet-and-confer process regarding additional terms sought by the non-producing party.

iii. The following provisions apply to search terms/queries of the requesting party. Focused terms and queries should be employed; broad terms or queries, such as product and company names, generally should be avoided. A conjunctive combination of multiple words or phrases (e.g., “computer” and “system”) narrows the search and shall count as a single search term. A disjunctive combination of multiple words or phrases (e.g., “computer” or “system”) broadens

1 the search, and thus each word or phrase shall count as a separate search term unless
2 they are variants of the same word. The producing party may identify each search
3 term or query returning overbroad results demonstrating the overbroad results and
4 a counter proposal correcting the overbroad search or query.

5 b. Upon reasonable request, a party shall disclose information relating to
6 network design, the types of databases, database dictionaries, the access control list and
7 security access logs and rights of individuals to access the system and specific files and
8 applications, the ESI document retention policy, organizational chart for information
9 systems personnel, or the backup and systems recovery routines, including, but not limited
10 to, tape rotation and destruction/overwrite policy.

11 3. Format.

12 a. ESI will be produced to the requesting party with searchable text, in a
13 format to be decided between the parties. Acceptable formats include, but are not limited
14 to, native files, multi-page TIFFs (with a companion OCR or extracted text file), single-
15 page TIFFs (only with load files for e-discovery software that includes metadata fields
16 identifying natural document breaks and also includes companion OCR and/or extracted
17 text files), and searchable PDF.

18 b. Unless otherwise agreed to by the parties, files that are not easily converted
19 to image format, such as spreadsheet, database, and drawing files, will be produced in
20 native format.

21 c. Each document image file shall be named with a unique number (Bates
22 Number). File names should not be more than twenty characters long or contain spaces.

23 When a text-searchable image file is produced, the producing party must preserve the

1 integrity of the underlying ESI, i.e., the original formatting, the metadata (as noted below)
2 and, where applicable, the revision history.

3 d. If a document is more than one page, the unitization of the document and
4 any attachments and/or affixed notes shall be maintained as they existed in the original
5 document.

6 e. The parties shall produce their information in the following format: single-
7 page images and associated multi-page text files containing extracted text or with
8 appropriate software load files containing all information required by the litigation support
9 system used by the receiving party.

10 f. The full text of each electronic document shall be extracted (“Extracted
11 Text”) and produced in a text file. The Extracted Text shall be provided in searchable ASCII
12 text format (or Unicode text format if the text is in a foreign language) and shall be named
13 with a unique Bates Number (e.g., the unique Bates Number of the first page of the
14 corresponding production version of the document followed by its file extension).

15 4. De-duplication. The parties may de-duplicate their ESI production across custodial
16 and non-custodial data sources after disclosure to the requesting party, and the duplicate custodian
17 information removed during the de-duplication process tracked in a duplicate/other custodian field
18 in the database load file.

19 5. Email Threading. The parties may use analytics technology to identify email
20 threads and need only produce the unique most inclusive copy and related family members and
21 may exclude lesser inclusive copies. Upon reasonable request, the producing party will produce a
22 less inclusive copy.

6. Metadata fields. If the requesting party seeks metadata, the parties agree that only the following metadata fields need be produced, and only to the extent it is reasonably accessible and non-privileged: document type; custodian and duplicate custodians (or storage location if no custodian); author/from; recipient/to, cc and bcc; title/subject; email subject; file name; file size; file extension; original file path; date and time created, sent, modified and/or received; and hash value. The list of metadata type is intended to be flexible and may be changed by agreement of the parties, particularly in light of advances and changes in technology, vendor, and business practices.

7. Hard-Copy Documents. If the parties elect to produce hard-copy documents in an electronic format, the production of hard-copy documents will include a cross-reference file that indicates document breaks and sets forth the custodian or custodian/location associated with each produced document. Hard-copy documents will be scanned using Optical Character Recognition technology and searchable ASCII text files will be produced (or Unicode text format if the text is in a foreign language), unless the producing party can show that the cost would outweigh the usefulness of scanning (for example, when the condition of the paper is not conducive to scanning and will not result in accurate or reasonably useable/searchable ESI). Each file will be named with a unique Bates Number (e.g., the unique Bates Number of the first page of the corresponding production version of the document followed by its file extension).

D. Preservation of ESI

The parties acknowledge that they have a common law obligation, as expressed in Rule 37(e), to take reasonable and proportional steps to preserve discoverable information in the party's possession, custody, or control. With respect to preservation of ESI, the parties agree as follows:

1. Absent a showing of good cause by the requesting party, the parties shall not be required to modify the procedures used by them in the ordinary course of business to back-up and

1 archive data; provided, however, that the parties shall preserve all discoverable ESI in their
2 possession, custody, or control.

3 2. The parties will supplement their disclosures in accordance with Rule 26(e) with
4 discoverable ESI responsive to a particular discovery request or mandatory disclosure where that
5 data is created after a disclosure or response is made (unless excluded under Sections (D)(3) or
6 (E)(1)-(2)).

7 3. Absent a showing of good cause by the requesting party, the following categories
8 of ESI need not be preserved:

9 a. Deleted, slack, fragmented, or other data only accessible by forensics.

10 b. Random access memory (RAM), temporary files, or other ephemeral data
11 that are difficult to preserve without disabling the operating system.

12 c. On-line access data such as temporary internet files, history, cache, cookies,
13 and the like.

14 d. Data in metadata fields that are frequently updated automatically, such as
15 last-opened dates (see also Section (E)(5)).

16 e. Back-up data that are duplicative of data that are more accessible elsewhere.

17 f. Server, system, or network logs.

18 g. Data remaining from systems no longer in use that is unintelligible on the
19 systems in use.

20 h. Electronic data (e.g., email, calendars, contact data, and notes) sent to or
21 from mobile devices (e.g., iPhone, iPad, Android devices), provided that a copy of all such
22 electronic data is automatically saved in real time elsewhere (such as on a server, laptop,
23 desktop computer, or “cloud” storage).

E. Privilege

1. A producing party shall create a privilege log of all documents fully withheld from production on the basis of a privilege or protection, unless otherwise agreed or excepted by this Agreement and Order. Privilege logs shall include a unique identification number for each document and the basis for the claim. For ESI, the privilege log may be generated using available metadata, including author/recipient or to/from/cc/bcc names; the subject matter or title; and date created. Should the available metadata provide insufficient information for the purpose of evaluating the privilege claim asserted, the producing party shall include such additional information as required by the Rules. Privilege logs will be produced to all parties as required by the Discovery Plan and Joint Scheduling Order.

2. Redactions need not be logged so long as the basis for the redaction is clear on the redacted document.

3. With respect to privileged or work-product information generated after the filing of the complaint, parties are not required to include any such information in privilege logs.

4. Activities undertaken in compliance with the duty to preserve information are protected from disclosure and discovery under Rules 26(b)(3)(A) and (B).

Pursuant to Federal Rule of Evidence 502(d), the production of any documents, electronically stored information (ESI) or information, whether inadvertent or otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law. This Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d). Nothing contained herein is intended to

1 or shall serve to limit a party's right to conduct a review of documents, ESI or information
2 (including metadata) for relevance, responsiveness and/or segregation of privileged and/or
3 protected information before production. Information produced in discovery that is protected as
4 privileged or work product shall be immediately returned to the producing party.

5
6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7 DATED this 4th day of February 2025.

8 DAVIS WRIGHT TREMAINE LLP
9 *Attorneys for Amazon Studios, LLC*

10 By s/ John A. Goldmark

11 John A. Goldmark, WSBA #40980
12 Caesar Kalinowski, WSBA #52650
13 Macaulay W. Ivory, WSBA #57858
14 920 Fifth Ave, Ste 3300
15 Seattle, WA 98104-1610
16 Telephone: (206) 757-8068
17 Fax: (206) 757-7700
18 Email: johngoldmark@dwt.com
19 macaulayivory@dwt.com
20 caesarkalinowski@dwt.com

21 DATED this 4th day of February 2025.

22 BRYAN CAVE LEIGHTON PAISNER LLP
23 *Attorneys for Content Delivery and Security*
24 *Association, Inc.*

By: s/ Chelsey Mam

25 Tyler L. Farmer, WSBA #39912
26 Ariel A. Martinez, WSBA #54869
27 Chelsey L. Mam, WSBA #44609
28 999 Third Avenue, Suite 4400
29 Seattle, WA 98104
30 Tel: (206) 623-1700
31 Fax: (206) 623-8717
32 Email: tyler.farmer@bclplaw.com
33 ariel.martinez@bclplaw.com
34 chelsey.mam@bclplaw.com

ORDER

The parties' stipulated motion (Dkt. No. 20) is GRANTED.

DATED: February 5, 2025.

A handwritten signature in black ink, reading "Kimberly K. Evanson". The signature is written in a cursive, flowing style. Below the signature is a solid black horizontal line.

Kimberly K. Evanson
United States District Judge